

**STATE OF OHIO
STATE EMPLOYMENT RELATIONS BOARD**

IN THE MATTER OF	:	
FACT FINDING BETWEEN	:	CASE NO. 2016-MED-01-0063
	:	
WASHINGTON-CENTERVILLE	:	Before: William C. Heekin, Esq.
PUBLIC LIBRARY STAFF	:	Fact Finder
ASSOCIATION, OEA/NEA	:	
	:	
Union,	:	<u>POSITION STATEMENT</u>
	:	<u>SUBMITTED ON BEHALF OF</u>
vs.	:	<u>WASHINGTON-CENTERVILLE</u>
	:	<u>PUBLIC LIBRARY STAFF</u>
	:	<u>ASSOCIATION, OEA/NEA</u>
WASHINGTON-CENTERVILLE	:	
PUBLIC LIBRARY	:	
	:	
Employer.	:	

This Position Statement is submitted in accordance with Ohio Administrative Code Rule 4117-9-06(E).

1. APPEARANCE

This Position Statement is submitted on behalf of Washington-Centerville Public Library Staff Association, OEA/NEA. The Association's principal representatives are:

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Washington-Centerville Library Staff Association, OEA/NEA Bargaining Committee Members:

Joyce Fisher, WCPLSA President, Library Specialist 2
Jenn Balbo, Library Specialist 2
Viola Cropper, Public Service Assistant 3
Julie Stanton, Public Service Assistant 2

2. DESCRIPTION OF THE BARGAINING UNIT, THE NEGOTIATIONS AND THE PENDING UNFAIR LABOR PRACTICE CHARGE

The Washington-Centerville Public Library Staff Association (hereafter "Association") was certified on May 22, 2009 as the exclusive bargaining representative of a combined unit of professional and non-professional classifications including: Library Specialist or Technician (with a Masters in Library Science); Reference Specialists & Assistants; Webmaster, Graphic Designer; Adult Programming Coordinator; Public Service Assistants, Technicians, Systems Support, Youth Assistants and Specialists; Book Liaison, A/V Liaison, Circulation Team Liaison, Outreach Coordinator, Scheduling Coordinator, Facilities Coordinator and Recruiter.

After the election results were certified, the Employer, the Washington-Centerville Public Library (hereafter "Employer" or "Library") filed objections to the election arguing that the Association was not an employee organization and that one or more of the Association's members restrained or coerced employees in the Association's response to propaganda disseminated by the Library. SERB conducted an investigation and dismissed the post-election objections. (Ex. 1)

Thereafter, the Employer filed an appeal which was dismissed in the Franklin County Court of Common Pleas on the basis the appeal was not properly filed. (Ex. 2) The Employer appealed the Common Pleas Court's decision to the Tenth Appellate District Court of Appeals. After the Ohio Supreme Court's decision in *Medcorp, Inc. v. Ohio Dep't of Job & Family Servs.*,

2009- Ohio-6425, the parties agreed to file a joint motion with the Court of Appeals to remand the matter back to the Franklin County Common Pleas Court for consideration on the merits. The Court of Appeals granted the motion and remanded the matter.

On June 28, 2010, the Franklin County Court of Common Pleas granted the appeal, basing its decision on the lack of investigation of the objections. (Ex. 3) The Court remanded the matter to SERB to again conduct an investigation into the objection filed by the Employer. By Order dated August 12, 2010, SERB remanded the matter to the Representation Section to conduct an investigation pursuant to the Court's ruling.

On December 22, 2011, SERB once again certified the 2009 election results dismissing the objections that had been filed by the Employer to the election. (Ex. 4) Again, not satisfied with SERB's Decision certifying the results of the election which, by this time, had been conducted thirty-three (33) months previously, on January 5, 2012, the Employer again appealed from SERB's decision to the Franklin County Court of Common Pleas.

On July 1, 2013, the Court affirmed SERB's Certification of Election Results in its entirety. (Ex. 5) The Employer again appealed from the Decision of the Franklin County Court of Common Pleas to the Tenth Appellate District and on May 15, 2014, the Court of Appeals affirmed the Trial Court's decision affirming SERB's certification of the bargaining unit. (Ex. 6) After more than five (5) years of litigation, the Association could begin bargaining for the employees who had selected the Association as their collective bargaining representative in March 2009.

The members of the Association experienced the Library's seemingly endless legal challenges and delays to the bargaining process and concluded it would be in their best interest to affiliate with a larger labor organization which had a presence in their community. The

Centerville Classroom Teachers' Association, affiliated with the statewide Ohio Education Association (hereafter OEA), represents employees of the Centerville City School District so the members of the bargaining unit concluded that affiliation with the OEA would be beneficial.

After conducting an affiliation vote on November 21, 2014, the Association filed a Petition to Amend the Certification solely to reflect the Association's affiliation with the OEA. Not surprisingly, the Employer opposed the Petition arguing that with the passage of time certain classifications in the bargaining unit had changed titles and the job duties of some classifications had changed such that they should no longer be appropriately included in the bargaining unit. Faced with the threat of more litigation and in order to proceed with the long awaited negotiations, the Association agreed to an amendment of certification which describes the bargaining unit as follows: Library Specialists or Technicians (with Masters in Library Science); Reference Specialists & Assistants; Webmaster, Graphic Designer; Adult Programming Coordinator; Public Service Assistants, Technicians, Youth Services Assistants and Specialists; Community Outreach & Development Coordinator, Facilities Administrator, and ILS Administrator. (Ex. 7) There are approximately 40 employees in the bargaining unit.

The parties began negotiating on June 22, 2015 and met eleven (11) times between June 22, 2015 and February 11, 2016, the Employer having canceled three (3) scheduled negotiation meetings which was nearly 25% of the meetings. While these cancelations were not the subject of an unfair labor practice charge, the cancelations are relevant in that they set the pattern and tone for the negotiations. In the negotiation meeting on February 11 as the parties were nearing the one year certification bar anniversary which was May 7, 2016, the parties agreed to use FMCS mediator John Gray to work with the parties to negotiate a settlement of the outstanding issues as he had some familiarity with the community and the parties. (Ex. 8)

On February, 23, Mediator John Gray offered the dates of March 4, 29, 30, and April 1, 4, 5, and 6 as available dates for mediation and, not surprisingly, on February 29 the Library communicated to the Association that it was only available on Tuesday, April 5. (Ex. 9)

The parties met with Mediator Gray on April 5 and the Association gave the Mediator a document outlining the outstanding issues between the parties. (Ex. 10) Based upon the document provided to the Mediator, the Association, through the Mediator made a "supposal" which adopted the Employer's position on all of the unresolved non-economic proposals and which addressed only the wage issue. The Employer did not provide a counter proposal stating through the Mediator they were not prepared to explore with the Association an overall settlement of the contract.

At the Mediator's suggestion, the parties agreed that the principal advocates for each party would participate in a conference call on Monday, April 11 at 10:00 a.m. The purpose of the call was to provide the Employer the opportunity to consider the Association's proposal to settle the contract and make a counter offer. The Mediator confirmed the conference call in an email to the parties on Friday, April 8. (Ex. 11) On Monday, April 11, Mediator Gray placed the conference call as scheduled but the Library's principal spokesperson failed to call the designated phone number.

Mediator Gray called Mr. Anspach's office at approximately 10:10 a.m. and Mr. Anspach stated he was not in a position to respond to the Association's offer of overall settlement of the contract. It became apparent to the Association the Employer was merely continuing its delay tactics, however, Mediator Gray scheduled another conference call for the following Monday, April 18 expressly for the purpose of allowing the Employer the opportunity to prepare a response to the Association's proposal. The parties agreed the conference call would take place

at 10:15 a.m. Mediator Gray again confirmed the call in an email that same day and by the end of the week, on Friday, April 15, Mr. Anspach sent an email to the Association stating the Library was withdrawing from mediation. (Ex. 12)

The Library's stated purpose for the cancelation of the second attempt at a conference call was to allow the parties to resume "traditional" negotiations to explore the economic proposals of wages, health insurance and OPERS pick up. Mr. Anspach stated the parties had been discussing the issue of health insurance but wanted to have more discussion about the Employer's wage proposal specifically. (Ex. 12) The Employer's failure and refusal to participate in mediation after having agreed to do so constituted bad faith bargaining and the Association filed an unfair labor practice charge arguing the Employer's conduct violated R.C. 4117.11(A)(1) and (A)(5). In support of its charge, the Association argued the Employer's real goal in refusing to participate in mediation was to delay reaching an agreement.

The Employer's true motive and bad faith was evident in the reason the Employer gave for withdrawing from mediation and refusing to participate in the two (2) conference calls. The stated purpose of the mediation meeting and the two (2) Mediator initiated conference calls was to discuss wages, which was the topic Mr. Anspach said the Library wanted to discuss in his email on April 15 canceling mediation. In fact, Mediator Gray's April 11 email expressly stated that the purpose of the call was to explore what the economics would look like if no other changes were made to the other non-economic items to which the parties had not yet agreed. The Library simply did not want to reach agreement. Subsequently, in support of the Association's argument, on May 13 the Association requested available dates for negotiations and the Library's principal spokesperson responded with dates and invited the Association to "feel free to invite the Mediator" if they thought he would be helpful. (Ex. 13) Incredibly this

offer was made after the Library declined to participate in settlement discussions with the Mediator.

In addition, it is significant to the Association's argument in support of the unfair labor practice charge that despite withdrawing from mediation for the express purpose of discussing wages, when the parties resumed discussions on June 15 and 20 without the Mediator because of his unavailability, the Employer's position on wages and health insurance never changed from its original proposal provided to the Association on July 15, 2015. In an effort to reach agreement, the Association significantly modified its proposal on wages and health insurance on both June 15 and June 20. (Exs. 14, 15) The Library's express purpose for pulling out of the mediation was to explore the parties' wage proposals yet the Library never changed their proposal.

On October 27, 2016 SERB issued an order directing the parties to pre-probable cause mediation which is currently being scheduled with the SERB Mediator.

The Library serves the citizens of Washington-Township and the City of Centerville which have a 2010 combined censuses of 56,607. During the fact-finding hearing, the Association will present evidence of external comparables which consist of libraries in SERB Regions 2 and 5 which are party to a collective bargaining agreement and other non-union libraries in the State of Ohio who the Library has frequently used over the years as a comparator with Washington-Centerville Public Library. (Ex. 16)

3. **STATEMENT SPECIFYING ALL UNRESOLVED ISSUES AND THE POSITION OF THE ASSOCIATION WITH REGARD TO EACH UNRESOLVED ISSUE**

The unresolved issues stemming from the Association's proposals are set forth below with reference to the articles of the proposed collective bargaining agreement. A copy of each proposal is attached hereto and incorporated herein.

1. **Article 9 – Vacancy and Transfer**

Proposed Article 9 contains a procedure whereby management of the Library, upon authorizing the filling of a bargaining unit vacancy, would be required to notify members of the vacancy, afford bargaining unit employees an opportunity to be interviewed for the vacancy, and ultimately determine which candidate is best qualified to fill the vacancy. The parties have agreed that when the Library authorizes the filling of a bargaining unit vacancy it shall notify all members of the vacancy via email and post the vacancy on bulletin boards at each Library location for a period of ten (10) calendar days. The parties have further agreed that members may submit a written letter of interest to Human Resources within ten (10) calendar days from the date of the posting. The Library proposed that the selection of the candidate would be at the Director's sole discretion and the Association agreed that the Director would have the sole discretion to select the candidate.

The parties disagree, however, on whether management should be required to interview those candidates who meet the minimum qualifications for the position. The Association proposed that prior to the selection of the candidate, all qualified internal applicants shall be afforded an interview. The Association defines qualified to mean that the bargaining unit member meets the minimum job requirements. The Association argued during negotiations that management may learn something new about an internal applicant's interests or skills in an interview which management may not have previously known. Affording an applicant who meets the minimum job requirements an interview also allows an applicant the opportunity to express his/her desire for a particular position and express how the applicant believes he/she best meets the requirements for the position.

In paragraph D, the Association also proposes that transfers and tasks changes will not be arbitrary or capricious. The Association makes this proposal because the bargaining unit employees have historically experienced a great deal of variation in their assignments and many have been transferred for what appears to be arbitrary and/or capricious reasons. In the future, the Association wants its members to be able to file a grievance if the member believes a transfer or task change has been made for arbitrary and/or capricious reasons noting, however, that the standard of arbitrary and capricious is high.

2. **Article 16 – Holidays**

The parties have agreed upon ten (10) holidays which will be granted without loss of pay to all employees, however, there remain two issues outstanding in the holiday article. The first issue arises in paragraph D which provides that any work performed on a holiday, other than those recognized as a floating holiday, shall be compensated at the rate of time and one-half pay for hours worked. The Association proposes to add the words “in addition to holiday pay” to make clear that an employee who works a holiday will be compensated at a rate of time and one-half for hours worked *in addition to holiday pay*. The Employer has opposed adding the words “in addition to holiday pay” in paragraph D.

In paragraph E, the Employer proposes that in order to receive holiday pay, employees must be present at work their last scheduled day before and their first scheduled day after the holiday. The Employer’s proposal represents a change in the employee’s terms and conditions of employment and this issue certainly affects economics.

The Association proposes that in order to receive holiday pay, employees must be in paid status but not necessarily at work their last scheduled day before and their first scheduled day after the holiday. The Association’s proposal is consistent with the current practice which has

been in effect for many years. In order to accommodate the Library's interests and attempt to reach agreement, the Association has proposed that the Library may require a physician's statement justifying the use of sick leave on the day before or after a holiday.

3. Article 19 – Sick Leave

The parties have agreed upon an accrual rate for sick leave and the circumstances under which sick leave may be taken, however, the parties have not agreed upon the definition of immediate family in paragraph E and the severance pay of sick leave for an employee retiring under the Ohio Public Employees Retirement System in paragraph F.

In paragraph E, the Association proposes to define "immediate family" to include domestic partner, parents of domestic partner, grandparents, grandchildren and siblings. Historically, these individuals have been included as immediate family in the library's policy. During negotiations with the Association, the Library changed its sick leave policy for all employees to exclude these individuals from the definition of immediate family, however, when the Association pointed out the Library could not change terms and conditions of employment for bargaining unit employees during negotiations, the Library reverted back to its previous policy for bargaining unit employees only. The Association proposes to memorialize the current policy in the contract so that domestic partners, parents of domestic partner, grandparents, grandchildren and siblings continue to be included in the definition of immediate family for purposes of sick leave.

The Association also proposes to add a sentence which provides that sick leave may also be used to supplement bereavement leave. This proposal is designed to again preserve what has been the status quo for many years.

Finally, the Association proposes that employees retiring under the Ohio Public Employees Retirement System shall receive severance pay equal to one-fourth of their accumulated and unused sick leave.

4. Article 22 – Child Care Leave

The Association proposes that in addition to paid leave such as sick leave, employees are entitled to an unpaid leave of absence for purposes of child care. The Association proposes that child care leave shall not exceed twelve (12) weeks from the birth of a child or placement of an adopted child and if the employee has not exhausted his/her FMLA rights while on a paid status, the time spent on unpaid child care leave would run concurrently with the available leave provided under the FMLA.

The Association proposes unpaid child care leave because many of the part-time employees are not eligible for FMLA leave and in a workforce population who are often times the primary, and sometimes the sole, caregiver in their families, this issue is extremely important. In support of this proposal, the Association will present anecdotal evidence of the Library's history of issuing negative evaluations to employees who have taken time off for pregnancy and/or child care issues.

5. Article 26 – Sick Leave Bank

The Association proposes to incorporate the current library policy regarding the operation of the sick leave bank. (Ex. 17) The purpose of the sick leave bank is to loan additional days to an employee who has experienced an accidental injury, surgery or serious illness to him or herself, his or her spouse, his or her domestic partner, his or her child, or anyone residing within the same household and who has exhausted all personal leave days, accumulated sick leave and any applicable advancement of sick leave. The current sick leave bank has approximately 5000

hours donated by the Library's employees, however, the requirements are so stringent that the bank has never been used despite the fact that employees have applied.

During negotiations the Association made a number of proposals to lessen the stringent requirements for the use of the sick leave bank, however, when the Library continued to oppose these proposals, the Association finally proposed to just incorporate the current sick leave bank policy with the hope that in future negotiations, that policy may be improved upon. To date, the Library has refused to even incorporate the current policy in the contract.

6. Article 27 – Sub-Contracting Bar

The Association proposed that there shall be no sub-contracting to a private company or any other agency of any bargaining unit position or job responsibility performed by bargaining unit employees as of January 1, 2015.

7. Article 29 – Salary

The Association proposes a three percent (3%) increase effective January 1, 2016 and a \$1,000 stipend to be paid on May 1, 2016 and September 1, 2016. The Association makes the same proposal for calendar year 2017 and calendar year 2018.

The Employer has currently assigned the various bargaining unit classifications to nine (9) different hourly wage bands with each band having a minimum wage, a midpoint, and a maximum hourly wage as follows:

Band	Pay Range			Classification			
	Minimum	Midpoint	Maximum	Library Specialist	Administrative	Technician	Customer Service Assistant
R	\$19.78	\$26.10	\$32.42		Facilities Administrators (5)		
P	\$17.97	\$23.73	\$29.48		ILS Administrator (4) Webmaster (4)		
O	\$17.12	\$22.60	\$28.08	Adult Services Specialist (2) Youth Services Specialist (2)			
N	\$16.30	\$21.52	\$26.74	Adult Services Specialist (1) Youth Services Specialist (1)	Adult Programming Coord (3) Graphic Designer (3) Comm Outreach & Dev. Coord (3)	Technician 4	
K	\$14.23	\$18.79	\$23.34			Technician 3	
I	\$12.94	\$17.08	\$21.22			Technician 2	
H	\$12.32	\$16.27	\$20.21				Public Services Assistant (3) Youth Services Assistant (3)
G	\$11.73	\$15.49	\$19.24				Public Services Assistant (2)
F	\$10.71	\$14.14	\$17.57			Technician 1	Public Services Assistant (1)

The Library administration evaluates the bargaining unit employees annually and assigns an overall rating of either exceptional, highly successful, successful, mostly successful, or needs improvement. An employee's annual merit raise within their assigned pay range is then based upon the employee's overall performance rating.

None of the bargaining unit employees are currently paid at the top of the range for their classification and many of them are paid at or below even the midpoint of the classification despite the fact that many have been employed by the Library for years. In addition to the inability of employees to progress through the pay range assigned to their classification even after many years of employment, the merit pay system has resulted in many inconsistencies among comparably rated employees.

In 2016, there were eleven (11) bargaining unit employees rated exceptional, sixteen (16) rated as highly successful, eleven (11) rated as successful and two (2) rated as mostly successful, however, the merit increases assigned to these ratings have been inconsistent. The increases for the exceptional employees ranged from 2.0% to 3.5% with an average of 2.9%. The increases for the highly successful employees ranged from 1.0% to 2.75% with an average of 2.2%. The

increases for the mostly successful employees ranged from 0% to 1% with an average of .5%, and the increases for the successful employees ranged from 1% to 1.75% with an average of 1.4%. As an example of the inconsistency, in 2016 an employee who was rated exceptional received a 2% increase while an employee rated as successful received a 1.75% and highly successful employees received 2.75% increases. A highly successful employee received a 1% increase while a successful employee received a 1.75% increase.

Because of these inconsistencies in the merit raise program, the Association proposes across the board increases for all bargaining unit employees which raises are not tied to evaluations. In support of its proposal, the Association will introduce evidence that the Employer's entry rate for the Library Specialists and Library Technicians, which are those employees with a master's degree in library science (MLS) has been reduced by 17.79% from 2006 to 2011 while the entry rate for these same classifications in comparable libraries has increased an average of 7.57% during that same time period. (Ex. 21) This reduction in the starting salary to allow the Library to hire staff at lower pay degrades the pay scale for a professional position.

Since 2012, average salaries for all library employees in comparable libraries have increased by 2.67% in 2013, 2.92% in 2014, 2.9% in 2015 and 2.78% in 2016. During that same period of time, the average salaries of bargaining unit employees have increased by 1.63% in 2013, 1.85% in 2014, 2% in 2015 and 2.1% in 2016.

With respect to the comparable libraries, bargaining unit employees in the classification of Library Specialist I are paid a \$1.36 per hour less than the average wage paid to their counterparts in other comparable libraries which means that bargaining unit employees in this classification are paid 8.3% less than their counterparts in other libraries. With respect to the

Library Specialists II classification, the entry rate paid to a bargaining unit employee is \$3.37 less than the average rate which means that the bargaining unit employee in this classification is paid 19.7% less than his/her counterpart in a similar classification in a comparable library. The highest paid Library Specialist II in the bargaining unit is paid nearly 9% below the average paid to his/her counterpart in a comparable library. (Ex. 23)

With respect to the Library's financial forecast, a 3 mill operating levy provides approximately 67% of the Library's funding. The current levy was passed in November 2011 and is projected to produce approximately \$4.5 million dollars per year in funding. Approximately 28% of the Library's revenue is from the Public Library Fund (PLF) which is a state fund meant to provide support for local libraries. The Fund is structured on a "percent of revenue" system, meaning it receives a percentage of the total state general fund revenue. In 2015 that percentage was set at 1.66% of the total state general fund revenue. This amount will increase to 1.7% in fiscal year 2016-2017. This money has been distributed to the counties who in turn pass it along to the library systems. Approximately 5% of the revenue comes from other funding sources including patron overdue fines, interest income, donations, etc. The Association will present evidence of the Library's sound financial forecasts through 2019. (Ex. 24)

8. **Article 31 – Insurance** - *Cville 85/15*

The Association proposes that for the duration of the collective bargaining agreement all current levels of health, dental, vision and life insurance benefits shall be maintained. For full-time employees, the Association seeks that an employee taking the "employee only" level of coverage shall pay fifteen percent (15%) of the premium while employees taking any other level of coverage will pay twenty percent (20%) of the premium. For part-time employees, the Association proposes that the employee taking the employee only level of coverage will pay

twenty-five percent (25%) of the premium and employees taking any of the other level of coverage will pay thirty percent (30%) of the premium.

In support of its proposal the Association will present evidence that the Library's monthly premium cost for health insurance at \$1205.02 for a family plan is below the average paid by other comparable libraries. (Ex. 25) Correspondingly, the premium cost to the employees is above the average paid by their peers in comparable libraries. (Ex. 25) In addition, the Library employees participate in the same health insurance plan as the Centerville City School employees yet the bargaining unit employees pay more for the exact same health insurance. (Ex. 26)

9. Article 3 – Modification of Agreement


The Employer proposes a zipper clause which to date has not been agreed upon.

10. Article _____ - Management Rights

The Employer has provided an expensive management rights article which the Association has opposed to date.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that an exact copy of the foregoing Position Statement has been sent via electronic mail to William C. Heekin, Esq. (wcheekin@fuse.net) and to Douglas C. Anspach, Esq. (anspach@taftlaw.com) on this 9th day of November, 2016.

